

Date: \_\_\_\_\_



**ACTION SPORTS**

570 Mantua Blvd Sewell, NJ 08080

# Dealer Application

- Hobby Shop
- Indoor Field
- Internet
- Pro-Shop
- Outdoor Field
- Sporting Goods
- Home Based
- Other  \_\_\_\_\_



Company Name : \_\_\_\_\_ Date Established: \_\_\_\_\_

Business Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Shipping Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Fax Number : \_\_\_\_\_ Website: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Primary Contact(s): \_\_\_\_\_

Please list name and address of persons having a greater than 25% interest in this business

Name & Address: \_\_\_\_\_

Name & Address: \_\_\_\_\_

Name & Address: \_\_\_\_\_

Name & Address: \_\_\_\_\_

Type Of Business: Corporation Sole Proprietorship Partnership LLC

Federal Tax # \_\_\_\_\_ Resale Certificate # \_\_\_\_\_

### Trade References

Company: \_\_\_\_\_ Phone: \_\_\_\_\_ Contact: \_\_\_\_\_

Company: \_\_\_\_\_ Phone: \_\_\_\_\_ Contact: \_\_\_\_\_

Company: \_\_\_\_\_ Phone: \_\_\_\_\_ Contact: \_\_\_\_\_

Size of Inventory : \_\_\_\_\_ Major Selling Items: \_\_\_\_\_

Estimated total annual purchases of paintball products: \_\_\_\_\_

Estimated total annual purchases from Kee Action Sports: \_\_\_\_\_

\* Kee Action Sports requires a minimum opening order of \$1,500.00. Initial order requirements maybe waived if wholesale invoices from other paintball manufactures can be provided.

Please Include the following when submitting the application:

- Completed Application & signed copy of attached master merchant agreement
- Photocopy of your State or County Resale/Business/ Occupational License
- Uniform Sales Tax Form (Form Provided with Application)
- Photos of your Store/Field/Office
- Copy of your Field Insurance Policy (Fields Applicants Only)
- Copy of Commercial Lease of Property (Internet Stores Applicants Only)
- Copy of Product Liability Insurance (Internet Store Applicants Only)
- Website, fully functional (Internet Applicants Only)



**Merchant**  
**Master Purchase Agreement**

**I. Introduction**

This Merchant Program Master Purchase Agreement (“Agreement”) is by and between, KEE Action Sports LLC (“Vendor”) and the purchaser of goods from Vendor (“Merchant”). This Agreement shall be deemed incorporated by reference in, and shall become a material term of, (i) all orders issued by Merchant and accepted by Vendor (“orders”), Vendor will not process orders or extend credit without a fully executed Agreement on file. Vendor and Merchant are sometimes collectively referred to herein as the “Parties,” or individually as a “Party.” The terms of this contract amend, modify and replace the terms of any previous contract between the Parties.

**II. General Sales Terms**

**A. General.** Merchant agrees to purchase from Vendor, and Vendor agrees to sell, package and ship to Merchant the products and quantities set forth in orders issued by Merchant and accepted by Vendor from time to time hereunder (collectively, the “Products,” or individually a “Product”). Vendor shall have the right to accept or reject each order issued by Merchant. In the event of any conflict between the terms of an order and this Agreement, the terms of this Agreement shall take precedence and control. No modification of this Agreement shall become effective unless in writing and signed by Vendor. Vendor may revoke this Agreement at any time with or without cause and without prior notice to Merchant.

**B. Shipping.** All orders are FOB Vendor’s warehouse. Title to shipped Products and risk of loss shall pass to the Merchant at Vendor’s warehouse; provided, however, Vendor shall retain an interest and lien on all Products until the Products have been paid for in full. Vendor may at its option place tracers on shipped Products. Merchant will be responsible for all freight, insurance, other shipping costs and any loss or damage incurred during shipping and all claim processing related to such loss or damage. Vendor, at its option, may pay freight, insurance and other shipping costs and invoice the Merchant for these costs. Title and risk of loss shall pass at Vendor’s warehouse notwithstanding payment of such costs by Vendor. Vendor will endeavor to ship items within one week after accepting Merchant’s order, subject to Product availability. Vendor cannot, however, guarantee shipment within this period. Vendor may under-ship or over-ship orders based on Product availability and Vendor’s convenience based on its reasonable understanding of course of conduct between Vendor and Merchant. Delivery and shipping times are not of the essence. Vendor will notify Buyer of order details once an order has shipped. Merchant agrees that Vendor may exercise reasonable discretion relating to the packaging and labeling of shipments. Orders cannot be cancelled later than 12 hours before Vendor’s normally anticipated shipping date and time.

**C. Warranty Information**

(1) **EXPRESS LIMITED LIFETIME WARRANTY.** Vendor provides an express limited lifetime warranty on its Products, as more particularly described in, and subject to the terms, conditions and exclusions set forth at Vendor’s website, [www.paintballsolutions.com](http://www.paintballsolutions.com). (the “Express Limited Warranty”).

(2) **THE EXPRESS LIMITED WARRANTY DOES NOT COVER INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

(3) The Express Limited Warranty extends exclusively to the original end-user of the warranted Product, is limited to the time period owned by the original end-user, and does not cover or extend to subsequent purchasers or transferees.

(4) **DISCLAIMER OF ALL OTHER WARRANTIES.** SAVE AND EXCEPT FOR THE EXPRESS LIMITED WARRANTY, VENDOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ITS PRODUCTS, AND, TO THE GREATEST EXTENT PERMITTED BY LAW, VENDOR DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION: (A) ANY WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE PRODUCTS; (B) ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSES FOR WHICH THE PRODUCTS MAY BE PURCHASED; AND (C) ANY AND ALL OTHER IMPLIED WARRANTIES OF ANY TYPE OR NATURE WITH RESPECT TO THE PRODUCTS.

**D. Limitation of Liability.** Vendor’s maximum liability to Merchant under any order, regardless of the basis of liability or the form of action, is limited in amount to an amount equal to the total purchase price actually paid for the Products or Product which is the subject of a claim by Merchant. Vendor is not liable for any indirect, special, incidental, or consequential damages, however caused, regardless of whether Merchant advised Vendor of the possibility of such damages, including without limitation lost profits and revenue. Merchant agrees to bring no action against Vendor’s officers, directors, employees, affiliates and other agents for any claim

related to this Agreement or any order or extension of credit. The purpose of this Section D is to limit Vendor' potential liability arising out of this Agreement and any order, and that allocation of risk is reflected in the prices, and will apply despite the failure of any remedy of its essential purpose.

**E. Returns.** Return authorization requests must be submitted by Merchant and approved by Vendor in writing. Vendor reserves the right to refuse to approve return authorization if Merchant's account is not current, among other things. No returns will be accepted without prior written authorization or after the earlier of 30 days past shipping or 10 days after delivery. Except in the case of over-shipped orders, Merchant shall bear all costs associated with returns. Credits will only be issued once returns are received and accepted and credit memos are issued. Failure to make a timely return authorization request shall constitute irrevocable acceptance and an admission that the Products delivered comply with the terms, conditions and specifications

**F. Disputes** In the event that suit is commenced or a claim asserted with respect to this Agreement or any order, the prevailing party shall be entitled to recover its costs of suit, litigation expenses and attorneys' fees incurred therein. Merchant expressly consent to venue and exclusive jurisdiction in the appropriate courts in Gloucester County, NJ or the county of Merchant's primary place of business, at Vendor's election, and waive any defense of forum non-conveniens. Each Surety expressly consents to venue and jurisdiction in the appropriate courts in Gloucester County, N.J. or the county of Surety's domicile, at Vendor's election, and waives any defense of forum non-conveniens. Service of process or any other legal notice may be served by registered mail, certified mail or by personal services. **MERCHANT AND SURETY HEREBY IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL IN ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION.. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY, EXCLUDING IT CONFLICTS OR CHOICE OF LAWS PROVISIONS.** The Parties acknowledge that the transactions that are subject to this Agreement bear a reasonable relationship to the State of New Jersey.

**G. Taxes.** Any taxes arising from the purchase, use or resale of the Products, such as sales tax, or any other local tax, are the responsibility of the Merchant.

**H. Force Majeure.** Vendor may, without liability, delay performance or cancel any order on account of force majeure events or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, failure of source of supply, or casualty.

**I. Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes and replaces all such prior agreements with respect to matters expressly set forth herein. This Agreement shall be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns and personal representatives

**J. Attorney's fees.** Merchant agrees to pay, in addition to all other sums payable hereunder, all costs and expenses (including reasonable attorney's fees) in connection with Vendor's enforcement of its rights under this agreement of collection, including but not limited to costs of collection..

**K. Amendment of Agreement.** The Agreement may be modified by and through the following procedures only: (a) a written amendment signed by all parties which shall be effective on or after the date all parties have signed, or on such other date as may be agreed to by all of the parties; or (i) by written notice of amendment sent by Vendor to the other parties which shall be effective no sooner than thirty (30) days from the date of such notice. Without limiting the foregoing. This Agreement is expressly conditioned on Merchant's assent to any different or additional terms contained herein.

**L. Applicability of the Uniform Commercial Code.** The Uniform Commercial Code, as adopted and in effect in the State of New Jersey at the time of the transaction to which this agreement relates (the "UCC"), will apply to transactions covered by this Agreement; provided, however, in the event of a conflict between the terms of this Agreement and the UCC, this Agreement will govern and control.. The United Nations Convention on Contracts for the International Sales of Goods shall not apply.

**M. Strict Construction.** No rule of strict construction shall be applied against any Party.

**N. Requirement for Written Waivers.** No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party.

**O. Severability** In the event that any part of these terms and conditions of this Agreement are held to be illegal or unenforceable in any jurisdiction, the other parts shall nonetheless remain in full force and effect

**P. Agreed Upon Restrictions Relating to Products.** As a material inducement to Vendor to enter into this Agreement and to sell Vendor's Products to Merchant, except as otherwise expressly agreed in writing by Vendor, Merchant promises and agrees that it will not: (a) make any modifications to, or copies of, any portion of Vendor's Products; (b) attempt to reverse engineer, disassemble,

reverse translate, decompile or in any other manner decode all or any portion of Vendor's Products; (c) remove any patent, trademark, or copyright notices which Vendor places on any of Vendor's Products or on any component thereof.

In witness whereof, Merchant submits this firm offer, intending to be legally bound and to bind their respective heirs, personal representatives, successors and assigns upon acceptance by Vendor.

Date: \_\_\_\_\_

**MERCHANT:**

\_\_\_\_\_  
[Full legal name of Merchant printed above]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**VENDOR:**

Kee Action Sports, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_